



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Reissue Application of:
Jan Hendrik Mensen

U.S. Patent No.: 5,657,600
Issued August 19, 1997

Reissue Application Serial No.: 09/374,598

Filed: August 13, 1999

For: **WEB MEMBER FOR CONCRETE
FORM WALLS**

Commissioner for Patents
Washington, D.C. 20231

Examiner: Stephan, B.

Art Unit: 3635

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GROUP 3600

Sir:

REQUEST FOR ORAL HEARING UNDER 37 C.F.R. § 1.194(b)

Applicant hereby requests an Oral Hearing of the Appeal in this application. This request is being filed concurrently with Appellant's Appeal Brief.

Authorization to charge Deposit Account 50-0310 in the amount of \$140.00 is given in the accompanying transmittal letter. Please also charge Deposit Account No. 50-0310 for any additional fees due in connection with the filing of this request, and please credit that Deposit Account for any excess fee paid.

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Dated: February 24, 2003

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Resolution of the recapture issue:

Claim 2 is barred by recapture. The limitation omitted in the reissue is "orange peel," and omission of "orange peel" is related to subject matter surrendered in the original application. The presence of the "orange peel" limitation and the resultant sweetness argued in the original application became an integral part of the claim, and a bread absent the "orange peel" limitation and the resultant sweetness has been surrendered. Claim 2 has the alternative species "lemon peel," but it omits the "orange peel" limitation with its resultant sweetness. Accordingly, even though claim 2 is narrower in that it requires the lemon peel limitation, there is impermissible recapture, and claim 2 should be rejected under 35 U.S.C. 251, as such.

CONSULTING T.C. SPRE IN CASE OF DOUBT

The above examples provide guidance in common fact situations involving recapture issues which may arise. Where variants of these fact situations arise for which the examiner is unsure of their resolution, the Special Program Examiner(s) of the Technology Centers should be consulted.

Cc: Nicholas P. Godici
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